

1 ELIZABETH A. STRANGE

2 First Assistant United States Attorney

3 District of Arizona

4 SHEILA PHILLIPS

5 Assistant U.S. Attorney

6 Michigan State Bar No. 51656

7 Two Renaissance Square

8 40 N. Central Ave., Suite 1800

9 Phoenix, Arizona 85004

10 Telephone: 602-514-7500

11 Email: Sheila.phillips2@usdoj.gov

12 Attorneys for Plaintiff

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MAR 14 2018
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY *[Signature]* DEPUTY

13 IN THE UNITED STATES DISTRICT COURT

14 FOR THE DISTRICT OF ARIZONA

15 United States of America,

16 Plaintiff,

17 vs.

18 Ivan Gonzalez,

19 Defendant.

No. CR-17-01202-PHX-DGC

PLEA AGREEMENT

20 Plaintiff, United States of America, and the defendant, IVAN GONZALEZ, hereby
21 agree to dispose of this matter on the following terms and conditions:

22 **1. PLEA**

23 The defendant will plead guilty to the lesser included offense of Count 1 of the
24 Indictment, Possession with Intent to Distribute Heroin in violation of Title 21, United
25 States Code, Sections 841(a)(1) and (b)(1)(C), a Class C felony offense.

26 **2. MAXIMUM PENALTIES**

27 a. A violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C), is punishable by a
28 maximum fine of \$1,000,000, and a maximum term of imprisonment of 20 years, or both, and
a term of supervised release of at least three years, and up to life. A maximum term of
probation is five years.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing
Reform Act of 1984, the Court shall order the defendant to:

1 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
2 § 3663 and/or 3663A, unless the Court determines that restitution would not be
3 appropriate;

4 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
5 fine is not appropriate;

6 (3) serve a term of supervised release when required by statute or when a
7 sentence of imprisonment of more than one year is imposed (with the understanding that
8 the Court may impose a term of supervised release in all other cases); and

9 (4) pay upon conviction a \$100 special assessment for each count to
10 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

11 c. The Court is required to consider the Sentencing Guidelines in determining
12 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
13 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
14 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that
15 the Court accepts.

16 d. The defendant understands and acknowledges that pleading guilty may result
17 in the termination or denial of certain food stamp, social security, and other benefits for
18 defendant and the defendant's immediate family pursuant to 21 U.S.C. §§ 862 and 862a.

19 **3. AGREEMENTS REGARDING SENTENCING**

20 a. Stipulation: Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and
21 the defendant stipulate that the defendant's sentence shall not exceed the low end of the
22 applicable sentencing range under the U.S. Sentencing Guidelines, which range will be
23 determined by the Court at sentencing and shall not include any upward or downward
24 departures under Section 4A1.3 or Chapter 5 of the U.S. Sentencing Guidelines or any
25 upward or downward variances.

26 b. Recommendation: Acceptance of Responsibility. Pursuant to Fed. R. Crim.
27 P. 11(c)(1)(B), if the defendant makes full and complete disclosure to the U.S. Probation
28 Office of the circumstances surrounding the defendant's commission of the offense, and if

1 the defendant demonstrates an acceptance of responsibility for this offense up to and
2 including the time of sentencing, the United States will recommend a two-level reduction
3 in the applicable Guidelines sentencing offense level pursuant to U.S.S.G. § 3E1.1(a). If
4 the defendant has an offense level of 16 or more, the United States will move for an
5 additional one-level reduction in the applicable Sentencing Guidelines offense level
6 pursuant to U.S.S.G. § 3E1.1(b).

7 c. Non-Binding Recommendations. The defendant understands that
8 recommendations are not binding on the Court. The defendant further understands that the
9 defendant will not be permitted to withdraw the guilty plea if the Court does not follow a
10 recommendation.

11 d. Assets and Financial Responsibility. The defendant shall make a full
12 accounting of all assets in which the defendant has any legal or equitable interest. The
13 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
14 transfer any such assets or property before sentencing, without the prior approval of the
15 United States (provided, however, that no prior approval will be required for routine, day-
16 to-day expenditures). The defendant also expressly authorizes the United States Attorney's
17 Office to immediately obtain a credit report as to the defendant in order to evaluate the
18 defendant's ability to satisfy any financial obligation imposed by the Court. The defendant
19 also shall make full disclosure of all current and projected assets to the U.S. Probation
20 Office immediately and prior to the termination of the defendant's supervised release or
21 probation, such disclosures to be shared with the U.S. Attorney's Office, including the
22 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the
23 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing
24 under this agreement and the law.

25 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

26 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States, at the time of
27 sentencing, shall dismiss Count 2 of the Indictment.
28

1 b. This agreement does not, in any manner, restrict the actions of the United
2 States in any other district or bind any other United States Attorney's Office.

3 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

4 a. If the Court, after reviewing this plea agreement, concludes that any
5 provision contained herein is inappropriate, it may reject the plea agreement and give the
6 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
7 11(c)(5).

8 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
9 vacated, or reversed at any time, this agreement shall be null and void, the United States
10 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
11 any charges that have been dismissed because of this plea agreement shall automatically
12 be reinstated. In such event, the defendant waives any and all objections, motions, and
13 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
14 restrictions in bringing later charges or proceedings. The defendant understands that any
15 statements made at the time of the defendant's change of plea or sentencing may be used
16 against the defendant in any subsequent hearing, trial, or proceeding subject to the
17 limitations of Fed. R. Evid. 410.

18 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

19 The defendant waives (1) any and all motions, defenses, probable cause
20 determinations, and objections that the defendant could assert to the indictment or
21 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
22 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
23 judgment against the defendant, or any aspect of the defendant's sentence, including the
24 manner in which the sentence is determined, including but not limited to any appeals under
25 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
26 (habeas petitions), and any right to file a motion for modification of sentence, including
27 under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal,
28 collateral attack, or other motion the defendant might file challenging the conviction, order

1 of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to
2 bar an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial
3 misconduct" (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

4 **7. DISCLOSURE OF INFORMATION**

5 a. The United States retains the unrestricted right to provide information and
6 make any and all statements it deems appropriate to the U.S. Probation Office and to the
7 Court in connection with the case.

8 b. Any information, statements, documents, and evidence that the defendant
9 provides to the United States pursuant to this agreement may be used against the defendant
10 at any time.

11 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
12 cooperation shall include providing complete and truthful responses to questions posed by
13 the U.S. Probation Office including, but not limited to, questions relating to:

14 (1) criminal convictions, history of drug abuse, and mental illness; and

15 (2) financial information, including present financial assets or liabilities
16 that relate to the ability of the defendant to pay a fine or restitution.

17 **8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

18 a. Nothing in this agreement shall be construed to protect the defendant from
19 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
20 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
21 monetary penalties, including restitution imposed by the Court, shall be due immediately
22 upon judgment, shall be subject to immediate enforcement by the United States, and shall
23 be submitted to the Treasury Offset Program so that any federal payment or transfer of
24 returned property the defendant receives may be offset and applied to federal debts (which
25 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
26 payments, the schedule of payments shall be merely a schedule of minimum payments and
27 shall not be a limitation on the methods available to the United States to enforce the
28 judgment.

1 **9. ELEMENTS**

2 **Possession with Intent to Distribute 100 Grams or More of Heroin**
3 **21 U.S.C. §§ 841(a)(1), 841(b)(1)(C)**

4 On or about July 4, 2017, in the District of Arizona:

- 5 1. The defendant knowingly possessed a mixture or substance containing a
6 detectable amount of heroin; and
7 2. The defendant possessed the heroin with the intent to distribute it to another
8 person.

9 **10. FACTUAL BASIS**

10 a. The defendant admits that the following facts are true and that if this matter
11 were to proceed to trial the United States could prove the following facts beyond a
12 reasonable doubt:

13 On or about July 4, 2017, the Defendant, IVAN GONZALEZ, traveled in an Express
14 Shutter shuttle van between Yuma and Wellton, Arizona after entering the United
15 States from Mexico on June 29, 2017. GONZALEZ was carrying over 100 grams
16 of heroin in his personal baggage when immigration officials stopped him for
17 inspection at the immigration checkpoint at Mile Marker 17. GONZALEZ knew
18 that he was carrying the heroin, was transporting it for money and expected to
19 receive payment for delivering it to another person.

20 b. The defendant shall swear under oath to the accuracy of this statement and,
21 if the defendant should be called upon to testify about this matter in the future, any
22 intentional material inconsistencies in the defendant's testimony may subject the defendant
23 to additional penalties for perjury or false swearing, which may be enforced by the United
24 States under this agreement.

25 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

26 I have read this agreement and carefully reviewed every part of it with my attorney.
27 I understand it and I voluntarily agree to it.
28

1 I have discussed the case and my constitutional and other rights with my attorney.
2 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
3 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
4 present evidence in my defense, to remain silent and refuse to be a witness against myself
5 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
6 to be presumed innocent until proven guilty beyond a reasonable doubt.

7 I agree to enter my guilty plea as indicated above on the terms and conditions set
8 forth in this agreement.

9 I have been advised by my attorney of the nature of the charges to which I am
10 entering my guilty plea. I have further been advised by my attorney of the nature and range
11 of the possible sentence and that my ultimate sentence shall be determined by the Court
12 after consideration of the advisory Sentencing Guidelines.

13 My guilty plea is not the result of force, threats, assurances, or promises, other than
14 the promises contained in this agreement. I voluntarily agree to the provisions of this
15 agreement and I agree to be bound according to its provisions.

16 I understand that if I am granted probation or placed on supervised release by the
17 Court, the terms and conditions of such probation/supervised release are subject to
18 modification at any time. I further understand that if I violate any of the conditions of my
19 probation/supervised release, my probation/supervised release may be revoked and upon
20 such revocation, notwithstanding any other provision of this agreement, I may be required
21 to serve a term of imprisonment or my sentence otherwise may be altered.

22 This written plea agreement, and any written addenda filed as attachments to this
23 plea agreement, contain all the terms and conditions of the plea. Any additional
24 agreements, if any such agreements exist, shall be recorded in a separate document and
25 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
26 be in the public record.

27 I further agree that promises, including any predictions as to the Sentencing
28 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone

1 (including my attorney) that are not contained within this written plea agreement, are null
2 and void and have no force and effect.

3 I am satisfied that my defense attorney has represented me in a competent manner.

4 I fully understand the terms and conditions of this plea agreement. I am not now
5 using or under the influence of any drug, medication, liquor, or other intoxicant or
6 depressant that would impair my ability to fully understand the terms and conditions of this
7 plea agreement.

8 03-14-18

9 Date

10 
11 IVAN GONZALEZ
12 Defendant

13 **APPROVAL OF DEFENSE COUNSEL**

14 I have discussed this case and the plea agreement with my client in detail and have
15 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
16 constitutional and other rights of an accused, the factual basis for and the nature of the
17 offense to which the guilty plea will be entered, possible defenses, and the consequences
18 of the guilty plea including the maximum statutory sentence possible. I have further
19 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
20 assurances, promises, or representations have been given to me or to the defendant by the
21 United States or any of its representatives that are not contained in this written agreement.
22 I concur in the entry of the plea as indicated above and that the terms and conditions set
23 forth in this agreement are in the best interests of my client. I agree to make a bona fide
24 effort to ensure that the guilty plea is entered in accordance with all the requirements of
25 Fed. R. Crim. P. 11.

26 3/14/18
27 Date

28 
BENJAMIN GOOD
Attorney for Defendant

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APPROVAL OF THE UNITED STATES

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

ELIZABETH A. STRANGE
Assistant United States Attorney
District of Arizona

3-14-18
Date

Sheila Phillips
SHEILA PHILLIPS
Assistant U.S. Attorney

ACCEPTANCE BY THE COURT

Date

HON. DAVID G. CAMPBELL
United States District Judge